

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
AUGUST 11, 2003
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:32 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Julia James, Administrative Services Director; Barbara Cameron, Grants Consultant; Ed Knight, Interim Planning Manager; Claudio Sanchez, Interim City Engineer; Kim Collins-Nillson, Project Manager; and Lisa Pope, City Clerk

ABSENT: Mayor Pro Tem Sharon Barovsky

FLAG SALUTE

Richard Scott led the Pledge of Allegiance.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

None.

City Attorney Hogin reported that the Council met in Closed Session at 5:30 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. Chicksands Properties LTD. v. City of Malibu et al.
Los Angeles County Superior Court Case No. BS072081
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)
Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355
4. City of Malibu v. California Coastal Commission (AB988 / LCP)
Los Angeles County Superior Court Case No. SC074641
Related cases (city named as a party in interest):

- a. Rick Appel v. California Coastal Commission
Case No. SC074658
- b. Ralph Herzig v. California Coastal Commission
Case No. SS011382
- c. Land Use Preservation v. California Coastal Commission
Case No. SS011388
- d. Riverview Farm Associates v. California Coastal Commission
Case No. SS011383
- e. Brian Sweeney v. California Coastal Commission
Case No. SS011387
- f. Trancas-PCH v. California Coastal Commission
Case No. SC074640
- g. Tuna Ridge v. California Coastal Commission
Case No. SC011381
- h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
5. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)
Ventura County Superior Court Case No. CIV 216938
6. City of Malibu / Geffen v. Access for All / Coastal Commission et al
Los Angeles County Superior Court Case No. BC277034
7. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. 00-10255-FMC(JWJx)
8. Malibu Township Council v. City of Malibu II (28-car garage)
Los Angeles County Superior Court Case No. BS079965
9. Marine Forest Society v. California Coastal Commission Case No. 00AS00567
(Sacramento Superior Court) (Amicus)
10. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
11. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
12. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)
13. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
14. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585
15. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu
Los Angeles County Superior Court Case No. BS072794
16. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753,
BS080758, BS080791

Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):

17. Number of Cases: 2

City Attorney Hogin reported that the Council discussed several but not all items listed on the Closed Session agenda and took no reportable action.

APPROVAL OF AGENDA

MOTION Councilmember House moved and Councilmember Stern seconded a motion to approve the agenda with Item 4.A. continued to September 8, 2003. The motion carried 4-0, Mayor Pro Tem Barovsky absent.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was posted on August 1, 2003 with the amended agenda posted August 8, 2003.

ITEM 1 CEREMONIAL/PRESENTATIONS

A. Recognition of the Senior Blue Ribbon Committee

Mayor Kearsley presented certificates of recognition to members of the Senior Blue Ribbon Committee.

ITEM 2A. PUBLIC COMMENTS

Bruce Schaffer discussed issues regarding view preservation and requested the Council proceed with adopting an ordinance to protect views.

Steve Uhring discussed Councilmember Jennings' offer to Ozzie Silna to present an alternative plan for the Malibu Bay Company Development Agreement. He stated Mr. Silna asked when a meeting could be held for him to present his alternative.

Bob Purvey stated he was going to respond to Mayor Pro Tem Barovsky's statements regarding slow traffic on Pacific Coast Highway, but she was not present. He stated he discussed the issue with Public Safety Commission Chair Randall. He stated it was necessary to address the unique aspects of Pacific Coast Highway.

Ryan Embree thanked the Council and staff for taking the cars off Civic Center Way. He discussed efforts being made towards safety on Pacific Coast Highway.

Jo Ruggles, representing Malibu Trails Association, asked when the Chute Trail would be unblocked. She stated there was no trailer parking at the new trail at Corral and Puerco. She stated an official letter of complaint was submitted to Code Enforcement Officer Sumpter and Public Works regarding trail closures.

Les Moss discussed Hans Laetz's comments to the City Council regarding the Trancas Sewer plant. He requested the Council support the County's rehabilitation plan as it currently exists.

In response to Councilmember Stern, Mr. Moss stated the City was on record supporting the initial plan but not regarding the most recent mitigated negative declaration. He discussed the costs incurred by Malibu West residents. He requested the Council support the current mitigated negative declaration and submit a letter to the County Board of Supervisors.

In response to Councilmember House, Mr. Moss indicated Malibu West had agreed to pay for an 18-foot fence. Councilmember House commended Malibu West for their efforts.

City Manager Lichtig stated staff was in the process of analyzing the mitigated negative declaration. She stated staff had met with Mr. Moss and Mr. Laetz. She stated City comments would be issued posthaste.

In response to Mayor Kearsley, Mr. Moss indicated the comment period had closed, but the Board of Supervisors would accept a letter from the City. City Manager Lichtig stated staff would submit comments. City Attorney Hogin stated staff would prepare comments for the Mayor's signature.

B. COUNCIL COMMENTS

Councilmember House thanked everyone for the letters of condolences she had received.

Councilmember Jennings requested staff inquire about the parking lot at Corral and Puerco.

CONSENSUS

By consensus, the Council directed staff to inquire of the Santa Monica Mountains Conservancy regarding the availability of horse trailer parking in the parking lot at Corral Canyon and Puerco Canyon.

Councilmember Jennings discussed the closure of the Chute Trail. He requested staff provide information on how to resolve the matter. He clarified that discussions regarding the MBC Development Agreement had gone on for four years, and he had invited alternatives throughout the process. He stated he would consider an alternative plan in written proposal format. He discussed the Perenchio golf course property. He stated he would provide the City Manager with information he had on the property.

CONSENSUS

By consensus, the Council directed staff to review and summarize the material submitted by Councilmember Jennings regarding the Perenchio golf course property.

ITEM 3 CONSENT CALENDAR

MOTION Councilmember Stern moved and Councilmember House seconded a motion to approve the consent calendar. The motion carried 4-0, Mayor Pro Tem Barovsky absent.

The Consent Calendar consisted of the following items:

A. Previously Discussed Items

1. Second Reading and Adoption of Ordinance No. 253

Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 253, an ordinance approving Zoning Text Amendment No. 03-003 regarding changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.46 (Wireless Telecommunications Antennas and Facilities), to clarify the regulations, procedures, and application requirements for the installation of wireless telecommunication antennas and facilities in the City of Malibu.

2. Second Reading and Adoption of Ordinance No. 254

Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 254, an ordinance approving Zoning Text Amendment No. 03-002 regarding zoning changes to Title 17 (Zoning) of the Malibu Municipal Code, Chapter 17.04 (Administration and Enforcement), more specifically Section 17.04.120 (Application–Filing), deleting the code provision that bars zoning applications where a code violation exists on the subject property and removing the reference of “Interim” throughout the Zoning Ordinance.

B. New Items

1. Waive further reading

Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

2. Approve Warrants

Staff recommendation: 1) To allow and approve warrant demand numbers 22569 through 22574, 22606 through 22612, and 22723 through 22756 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 291 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$252,139.09; and 2) to allow and approve warrant demand numbers 22575 through 22605 and 22613 through 22722 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of

the claimants listed in Warrant Register No. 291 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands making a total amount of \$246,061.02, including ADP payroll voucher numbers 4699919 – 4699938 in the amount of \$107,017.26 and ADP payroll voucher numbers 4940483 – 4940504 in the amount of \$104,734.39 totaling \$211,751.65.

3. Approval of Minutes
Approve City Council meeting minutes for the Regular City Council meeting held on July 14, 2003.
4. Malibu Road Drainage Project – Award of Construction Contract
Staff recommendation: 1) Authorize the City Manager to execute a contract with Kalban, Inc. of Sun Valley in the amount of \$45,796.50 for the Malibu Road Drainage Project; and 2) adopt Resolution No. 03-47 authorizing the City Manager to execute Program Supplement No. M005.
5. City Manager Employment Contract
Staff recommendation: Approve Amendment No. 1 to City Manager Employment Contract between Katie E. Lichtig and the City of Malibu.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

- A. ADOPTION OF RESOLUTIONS AND ORDINANCES FOR THE PROPOSED WINDSAIL DEVELOPMENT AGREEMENT – The proposed project consists of an application to reconstruct the former Windsail Restaurant into a new 9,555 square foot restaurant and day spa facility. In addition to the requested Development Agreement, the application includes requests for an amendment to the General Plan Land Use Map and Zoning Map from Multi-Family Residential (MF) to Visitor Serving Commercial (CV); a Conditional Use Permit for a restaurant and bar facility; a Variance to allow parking in the front yard setback area; a Variance for a reduction in the amount of required landscaping; and a Demolition Permit to tear down the existing 7,500 square foot restaurant building. APPLICANT: Weintraub Financial; OWNER: Weintraub Financial; LOCATION: 22706 Pacific Coast Highway; SITE ACREAGE: 1.11 Acres; ZONING: Existing: Multi-Family Residential; Proposed: Commercial Visitor Serving (CV-1)
Staff recommendation: Continue this item to the City Council meeting of September 8, 2003.

This item was continued to September 8, 2003 upon approval of the agenda.

- B. Charitable Solicitation Ordinance
Staff Recommendation: After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 258 amending Chapter 5.12 of the Municipal Code.

City Attorney Hogin presented the staff report.

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to introduce on first reading Ordinance No. 258 amending Chapter 5.12 of the Municipal Code. The question was called and the motion carried 4-0, Mayor Pro Tem Barovsky absent.

ITEM 5 OLD BUSINESS

None.

ITEM 6 NEW BUSINESS

None.

ITEM 7 COUNCIL ITEMS

A. Council Appointments to City Commissions and Committees

Staff recommendation: Appoint new Commission and Committee members to various City Commissions and Committees.

Mayor Kearsley appointed Leslie Schwarz to the Trails Master Plan Advisory Committee.

Councilmember Jennings appointed Jo Ruggles to the Trails Master Plan Advisory Committee.

Councilmember House requested continuing her appointment to the Mobilehome Park Rent Stabilization Commission.

B. Request of Mayor Kearsley to Discuss Various Topics Related to the November 4, 2003 Special Municipal Election Ballot Measure Regarding the Malibu Bay Company Development Agreement (Mayor Kearsley)

Requested Action: Mayor Kearsley requested the Council consider the following:

- 1) delegating authority to the Mayor to:
 - a) draft the ballot argument in favor of the measure concerning the Malibu Bay Company Development Agreement after receiving ideas from the Council on messages and themes to be included;
 - b) sign the ballot argument in favor of the measure on behalf of the City Council; and
 - c) select four other members of the community to sign the ballot argument in favor of the measure;
- 2) authorizing the Mayor to:
 - a) either draft or delegate the responsibility to draft the rebuttal to argument against the measure;
 - b) sign the rebuttal to argument against the measure on behalf of the City Council or not as the Mayor deems appropriate; and

- c) select up to five members of the community to sign the rebuttal to argument against the measure; and
- 3) directing staff to prepare a letter on behalf of the Mayor to the County Registrar-Recorder/County Clerk requesting "M" as the letter designation for the ballot measure with "L" as the alternative from the County Registrar-Recorder/County Clerk.

Mayor Kearsley presented the report.

Councilmember House expressed concern regarding the requested actions related to rebuttal arguments. She requested approval of the arguments by another Councilmember in addition to Mayor Kearsley.

Mayor Kearsley stated he understood Councilmember House's concerns, but he would like the opportunity to do it on behalf of the City Council.

City Attorney Hogin stated the rebuttal arguments were due August 25, 2003, which allowed additional time for another Councilmember to participate.

Councilmember House stated she would feel more comfortable with another set of eyes looking at the arguments.

Councilmember Jennings suggested emailing the arguments to Councilmember House for review and comment with the Mayor having the final decision. Councilmember House concurred.

City Attorney Hogin explained the process for Councilmember House to review the arguments with the Mayor ultimately writing the arguments. She discussed Brown Act provisions related to more than two Councilmembers participating.

Councilmember Stern asked why it would be a Brown Act violation. City Attorney Hogin explained that the ballot writing issue was in a gray area as to whether or not it was a matter within the subject matter jurisdiction of the City Council. She advised the Council to keep the matter open and public.

Councilmember House stated time constraints limited review of the arguments.

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to approve the requested action as follows:

- 1) delegating authority to the Mayor to:
 - a) draft the ballot argument in favor of the measure concerning the Malibu Bay Company Development Agreement after receiving ideas from the Council on messages and themes to be included, with review and input by Councilmember House;

- b) sign the ballot argument in favor of the measure on behalf of the City Council; and
 - c) select four other members of the community to sign the ballot argument in favor of the measure;
- 2) authorizing the Mayor to:
 - a) either draft or delegate the responsibility to draft the rebuttal to argument against the measure, with review and input by Councilmember House;
 - b) sign the rebuttal to argument against the measure on behalf of the City Council or not as the Mayor deems appropriate; and
 - c) select up to five members of the community to sign the rebuttal to argument against the measure; and
- 3) directing staff to prepare a letter on behalf of the Mayor to the County Registrar-Recorder/County Clerk requesting "M" as the letter designation for the ballot measure with "C" as the alternative.

The question was called and the motion carried 4-0, Mayor Pro Tem Barovsky absent.

POST HOC NOTE: On August 12, 2003, the City Attorney advised the City Council in writing that, prior to the Council's decision to assign Councilmember House and Mayor Kearsley the task of authoring the ballot argument, Mayor Pro Tem Barovsky (who was absent from the August 11 Council meeting) drafted a proposed argument and transmitted it to the Mayor for his review/use. Accordingly, the City Attorney advised Councilmember House that she should forego review of the argument (because her involvement would constitute a quorum of members working on the argument resulting in an impermissible "serial meeting" under the Brown Act). Councilmember House agreed. Approval of these minutes acknowledges this communication.

- C. Recognition of the Coastal Trail Expedition (Councilmember Jennings)
Requested Action: Recognize the Coastal Trail Expedition that is scheduled to be in Malibu on September 1, 2, and 3, 2003.

Councilmember Jennings presented the report. He requested Ted Vaill assist the expedition.

Mayor Kearsley stated he had been asked by Coast Walk to participate on September 1, 2003.

CONSENSUS

By consensus, the Council directed staff to prepare a certificate for the Mayor to present on September 1, 2003.

ADJOURN At 7:18 p.m., Councilmember Jennings moved and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of the City of Malibu
on September 11, 2003.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)